

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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EDWARD FINLEY, and LEODIAS  
EDWARDS,

Plaintiffs,

v.

STATE OF NEVADA, et al.,

Defendants.

Case No. 3:14-cv-00011-MMD-WGC

ORDER

**I. SUMMARY**

Before the Court are identical motions to vacate judgement filed by Plaintiffs Leodias Edwards and Edward Finley. (Dkt. nos. 43, 44.) The Court has reviewed Plaintiffs' motions and Defendants' response. (Dkt. no. 45.) For the reasons discussed below, Plaintiffs' motions are denied.

**II. BACKGROUND**

Plaintiffs, who at the time in question were inmates at the Lovelock Correctional Center, brought a lawsuit alleging various constitutional and statutory violations stemming from the Nevada Department of Correction's ("NDOC") decision to move them from a kosher meal to a new "Common Fair Diet." (Dkt. no. 1-3 at 7.) The parties filed cross motions for summary judgement (dkt. nos. 21, 22, 27), and the Magistrate Judge issued a report and recommendation ("R&R") recommending Plaintiffs' motions be denied and Defendants' motion be granted (dkt. no. 36.). Plaintiffs filed objections and, after review, this Court adopted the Magistrate Judge's R&R in full. (Dkt. no. 41.)

1 Plaintiffs now ask the Court to vacate its judgment because, they argue, the  
2 Court overlooked a piece of evidence. Specifically, Plaintiffs contend that the Court  
3 either ignored or overlooked a letter of kosher certification (“certification letter”) from a  
4 Rabbi Yisroel Rosskamm to NDOC dated August 27, 2012. (Dkt. no. 43 at 11.) Plaintiffs  
5 cite Rule 60(b)(1) as a basis for their motions.

### 6 **III. DISCUSSION**

7 The Court may relieve a party from a final judgment for “mistake, inadvertence,  
8 surprise, or excusable neglect.” Fed. R. Civ. P. 60(b)(1). The determination of a mistake  
9 or excusable neglect is “purely a matter of discretion with the trial court.” *Smith v. Stone*,  
10 308 F.2d 15, 18 (9th Cir. 1962)

11 As an initial matter, Plaintiffs are not arguing that the Court should vacate its  
12 judgment due to a mistake by either the parties or their counsel. Rather, their argument  
13 is that the Court either ignored or misinterpreted evidence. While Defendants suggest  
14 that Rule 60(b)(1) applies only to mistakes made by parties, the Ninth Circuit has clearly  
15 stated that the rule applies to courts as well. *Fidellity Fed. Bank, FSB v. Durga Ma*  
16 *Corp.*, 387 F.3d 1021, 1024 (9th Cir. 2004) (“The district court has discretion to correct a  
17 judgment for mistake or inadvertence, either on the part of counsel or the court itself.”);  
18 *Kingvision Pay-Per-View Ltd. v. Lake Alice Bar*, 168 F.3d 347, 350 (9th Cir. 1999) (Rule  
19 60(b) is not limited to parties and “may include mistake and inadvertence by the  
20 judge.”). Therefore, the Court will evaluate Plaintiffs’ claim that it mistakenly overlooked  
21 a piece of evidence.

22 Both the Magistrate Judge and this Court considered the certification letter as  
23 part of their analysis. The Magistrate Judge cited the certification letter in his R&R. (Dkt.  
24 no. 36 at 10.) This Court referenced the certification letter in its order adopting the R&R.  
25 (Dkt. no. 41 at 4.) Plaintiffs’ argument as to the certification letter was considered by  
26 both the Magistrate Judge and this Court. Plaintiffs were put on the Common Fair Diet  
27 on June 15, 2012. (Dkt. no. 1 at 7.) Defendants provided evidence that from its  
28 inception, the Common Fair Diet was meant to be kosher and was therefore planned


1 and implemented under rabbinical supervision. (Dkt. no. 27-1 ¶¶ 5-11.) The group  
2 supervising the preparation of the meals issued the certification letter on August 27,  
3 2012. (Dkt. no. 43 at 11.) Plaintiffs did not offer any evidence or argument to show that  
4 consuming the meals prepared under rabbinical supervision, even before the  
5 certification letter was issued, burdened their sincere religious beliefs.

6 In sum, the Court did not mistakenly ignore the certification letter when it adopted  
7 the R&R and granted the Defendants' motion for summary judgement; the Court  
8 considered the certification letter but rejected Plaintiffs' arguments.

9 **IV. CONCLUSION**

10 It is therefore ordered that Plaintiffs' motions to vacate judgment (dkt. nos. 43,  
11 44) are denied.

12 DATED THIS 10<sup>th</sup> day of December 2015.

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15 MIRANDA M. DU  
16 UNITED STATES DISTRICT JUDGE  
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